



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** September 25, 2007

**TO:** Mayor and Councilmembers

**FROM:** City Attorney's Office

**SUBJECT:** Interim Zoning Control Ordinance Relating To Medical Marijuana Dispensaries

### RECOMMENDATION:

That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Title 28 of the Santa Barbara Municipal Code by Adding Chapter 28.80 Imposing a Conditional Use Permit Requirement on Medical Marijuana Dispensaries to the City's Zoning Ordinance.

### DISCUSSION:

On August 14, 2007, the City Council directed the City Attorney and Community Development staff to prepare a draft ordinance to suspend the opening of any further medical marijuana dispensaries within the City. As required by the state Planning and Zoning Law, this draft "Interim Control Ordinance" temporarily prohibiting the establishment of any new medical marijuana dispensaries within the City was submitted to the Planning Commission for its review and comment under the authority of the state Government Code §§ 65854 and 65855 on Thursday, September 6, 2007. Appropriate and minor editing revisions were requested by the Commission but the substance of the proposed ordinance was not changed.

The proposed Interim Medical Marijuana Dispensary Control Ordinance prohibits establishment of new medical marijuana dispensaries, on a citywide basis, for a period of six months beginning as of August 14, 2007. During this "Interim Control" period, the Community Development Department staff and the City Attorney's office will work to develop a draft permanent SBMC Title 28 ordinance regulating medical marijuana dispensaries, most likely by suggesting a conditional use permit ("CUP") requirement. As required by state law, Staff will also arrange for the permanent ordinance to be reviewed at a noticed public hearing by the Planning Commission and considered by the Council Ordinance Committee. Eventually, we anticipate that the permanent ordinance will be considered for adoption by the City Council in early 2008.

---

REVIEWED BY: \_\_\_\_\_ Finance \_\_\_\_\_ Attorney

Agenda Item No. \_\_\_\_\_

## **BACKGROUND INFORMATION:**

Under the federal Controlled Substances Act, enacted by the United States Congress in 1970, cannabis (marijuana) is classified as a Schedule I controlled substance. This classification is based on a determination that marijuana (1) has a high potential for abuse, (2) has no currently accepted use for medical treatment, and (3) is not accepted as safe, even when used under medical supervision. This federal law makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States. Use of marijuana is also prohibited under the "California Uniform Controlled Substances Act," enacted by the state Legislature in 1972.

At an election held on November 5, 1996, the voters of the state of California approved Proposition 215 (the "Compassionate Use Act") which is designed to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited and specified circumstances. In 2003, in an effort to answer some of the implementation questions left unaddressed by Prop 215, the California state Legislature enacted Senate Bill 420. SB 420, by creating a process whereby each county health commissioner issues medical marijuana patient photo identification cards, makes it easier for qualified medical marijuana patients to avoid being arrested for the possession and use of small amounts of marijuana. However, SB 420 did not enact state statutes which legalize marijuana "dispensaries" per se - especially those that are operated on a "for profit" basis. In this regard, SB 420 creates the defined role of a "primary caregiver" who may assist a "qualified medical marijuana patient" in obtaining minor amounts of medical marijuana. However, since the enactment of SB 420 and the recent growth of "medical marijuana dispensaries throughout California, it has become apparent to many cities and counties that it is often necessary to formulate local land use and zoning regulations (consistent with state laws) governing the operation of appropriate and allowed medical marijuana dispensaries acting as "primary caregivers."

This "land use" (i.e., or locational regulatory approach) is generally intended to protect residents, adjacent businesses, and patients from the adverse secondary effects of these dispensary establishments. This methodology is very much like the land use and zoning regulations which are typically applicable to the operation of an adult business.

The City's Community Development and Finance Department report that, as of the summer of 2007, there are apparently 10 or so known medical marijuana dispensaries operating at fixed business/retail locations within the city of Santa Barbara. Based on concerns raised by neighbors, a few of these dispensaries may be located in close proximity to sensitive uses such as day care centers, parks, schools, and residentially used properties. The Police Department also reports that there has been a recent increase in crime at some dispensaries including theft and robbery. The Police Department has also received increased complaints from neighbors, business owners, and concerned citizens about loitering problems possibly associated with a few of these dispensaries.

Due to the recent apparent increase in such establishments within the City, and the amount of time required to prepare and adopt permanent zoning regulations, as indicated, an Interim Control Ordinance was requested by the City Council in order to place temporary restrictions on the establishment of any new medical marijuana dispensaries until permanent City land use regulations are considered and possibly adopted.

The draft interim ordinance attached to this report also creates a requirement that existing dispensaries which opened prior to August 14, 2007 submit specific documents to the City informing the City of their existence and establishing their pre-existing legal status and thus exempting them for the interim prohibition. Otherwise, no new dispensaries will be allowed during this 6 month interim period. The ordinance's exemption provision states that the existing medical marijuana dispensaries are to submit copies of specific documents and register with the Police Department within 60 days of the effective date of the ordinance in order to prove their pre-existing legal status.

This draft Interim Control Ordinance should allow the City the time it needs to undertake the critically important task of developing a comprehensive strategy for appropriately regulating medical marijuana dispensaries, possibly through the use of a CUP requirement. This method should ensure that this important legislative opportunity is fully examined in depth while protecting the status quo by not permitting new medical marijuana dispensaries to be established throughout the City. The proposed ordinance has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines as an ordinance which have no negative impact on the physical environment and, as a temporary enactment, under CEQA Guideline Section 15305 as a "minor alteration in land use limitations."

**SUBMITTED BY:** Stephen P. Wiley, City Attorney

**APPROVED BY:** City Administrator's Office